UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.	216226US-25 CONT
First Inventor or Application Identifier	Richard E. Fulton, III
Title	BIOPSY LOCALIZATION METHOD AND DEVICE
Assignee Name:	ARTEMIS MEDICAL, INC.
Assignee Address:	21021 Corsair Boulevard, Suite 100, Hayward, CA 94545

jc823 U.S. PTO 11/30/01

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents

ADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, DC 20231

1. ■ Fee Transmittal Form (e.g. PTO/SB/17) (Submit an original and a duplicate for fee processing)
2. ■ Specification — Total Sheets: 17
3. ■ Formal Drawing(s) *(35 U.S.C. 113)* — Total Sheets: 3
4. ■ Oath or Declaration — Total Pages: 3
   a. □ Newly executed (original or copy)
   b. ■ Copy from a prior application (37 C.F.R. §1.63(d)) (for continuation / divisional w/ box 17 completed)
      i. □ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see *37 C.F.R. §1.63(d)(2) and 1.33(b).*
5. □ CD-ROM or CD-R in duplicate, large table or Computer Program (*Appendix*)
6. □ Nucleotide and/or Amino Acid Sequence Submission (*if applicable, all necessary*)
   a. □ Computer Readable Form (CRF)
   b. Specification or Sequence Listing on:
      i. □ CD-ROM or CD-R (2 copies); or
      ii. □ Paper
   c. □ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

7. ■ Assignment was recorded at Reel 011439 and Frame 0045
8. ■ Application Data Sheet. See 37 CFR 1.76
9. □ 37 C.F.R. §3.73(b) Statement *(when there is an assignee)* ■ Power of Attorney
10. □ English Translation Document *(if applicable)*
11. □ Information Disclosure Statement (IDS)/PTO-1449 □ Copies of IDS Citations
12. ■ Preliminary Amendment
13. ■ White Advance Serial No. Postcard
14. □ Certified Copy of Priority Document(s) *(if foreign priority is claimed)*
15. ■ Applicant claims small entity status. *See 37 CFR 1.27*
16. ■ Other: Confirmation of Attorney and Correspondence Address
    37 CFR 1.607 Request for an Interference with a Patent
    PTO Form 850

jc821 U.S. PTO 09/996878 11/30/01

17. If a CONTINUING APPLICATION, *check appropriate box, and supply the requisite information below:*
    ■ Continuation □ Divisional □ Continuation-in-part (CIP) of prior application no.: 09/900,801
    Prior application information: Examiner: B. Szmal Group Art Unit: 3736

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 4b, is considered a part of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

18. Amend the specification by inserting before the first line the sentence:
    □ This application is a □ Continuation □ Division □ Continuation-in-part (CIP) of application Serial No. Filed on
    □ Which was published in English
    □ Which was not published in English
    □ This application claims priority of provisional application Serial No. Filed

19. CORRESPONDENCE ADDRESS

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Name:	Charles L. Gholz	Registration No.:	26,395
Signature:	Jana R. Boler	Date:	30 Nov. 2001
Name:	James R. Boler	Registration No.:	37,058

Docket No. 216226US-25 CONT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR(S) Richard E. Fulton, III, et al.

SERIAL NO: New Application

FILING DATE: Herewith

FOR: BIOPSY LOCALIZATION METHOD AND DEVICE

FEE TRANSMITTAL

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

FOR	NUMBER FILED	NUMBER EXTRA	RATE	CALCULATIONS
TOTAL CLAIMS	37 - 20 =	17	× $18 =	$306.00
INDEPENDENT CLAIMS	2 - 3 =	0	× $84 =	$0.00
☐ MULTIPLE DEPENDENT CLAIMS (If applicable)			+ $280 =	$0.00
☐ LATE FILING OF DECLARATION			+ $130 =	$0.00
			BASIC FEE	$740.00
			TOTAL OF ABOVE CALCULATIONS	$1,046.00
■ REDUCTION BY 50% FOR FILING BY SMALL ENTITY				$-523.00
☐ FILING IN NON-ENGLISH LANGUAGE			+ $130 =	$0.00
☐ RECORDATION OF ASSIGNMENT			+ $40 =	$0.00
			TOTAL	$523.00

☐ Please charge Deposit Account No. 15-0030 in the amount of ☐ A duplicate copy of this sheet is enclosed.

■ A check in the amount of **$523.00** to cover the filing fee is enclosed.

■ The Commissioner is hereby authorized to charge any additional fees which may be required for the papers being filed herewith and for which no check is enclosed herewith, or credit any overpayment to Deposit Account No. 15-0030. A duplicate copy of this sheet is enclosed.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Date: 30 Nov. 2001

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Docket No. 216226US 25 CONT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: RICHARD E. FULTON, III, ET AL.
SERIAL NO: New Application
FILED: Filed Herewith
FOR: BIOPSY LOCALIZATION METHOD AND DEVICE

CONFIRMATION OF ATTORNEY AND CORRESPONDENCE ADDRESS

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

The undersigned hereby confirms the attorneys of record for the above-identified application as those appearing in the Revocation and New Appointment of Power of Attorney filed in parent (grandparent) application Serial Number 09/900,801, and accordingly requests the appropriate attorneys of record be noted, and the correct correspondence address be entered for this application as follows:

22850

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Respectfully submitted,

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MAIER & NEUSTADT, P.C.

James R. Boler
Registration No. 37,058

Charles L. Gholz
Registration No. 26,395

Docket No. 216226US 25 CONT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF:

FULTON III, ET AL.

GAU: 3736 (Anticipated)

SERIAL NO: New Application
(Continuation of serial No. 09/900,801)

EXAMINER: B. Szmal (Anticipated)

FILED: Herewith

FOR: BIOPSY LOCALIZATION METHOD AND DEVICE

37 CFR 1.607 REQUEST FOR AN INTERFERENCE WITH A PATENT

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

I. 37 CFR 1.607(a)(1)

The patent is U.S. patent No. 6,161,034 issued December 12, 2000 and naming Fred H. Burbank, Paul Lubock, Michael L. Jones, and Nancy Forcier as inventors (hereinafter referred to as "the '034 patent"). The assignee at issue was Senorx, Inc.

II. 37 CFR 1.607(a)(2)

Applicants propose the following count, which is in the format approved by the Commissioner in Orikasa v. Oonishi, 10 USPQ2d 1996, 2003 (Comm'r 1990), and Davis v. Uke, 27 USPQ2d 1180, 1188 (Comm'r 1993):

Claims 1 or 40 in the '034 patent

OR

Claims 53 or 88 in the Fulton, III, et al. application.

An extra copy of the proposed count is submitted herewith for the examiner's use in filling out the form PTO-850. In addition, as explained in Section IX of this request, a proposed form PTO-850 is submitted herewith for the examiner's convenience.

III. 37 CFR 1.607(a)(3)

All 41 claims in the '034 patent correspond to the proposed count. Indeed, the proposed count includes all of the independent claims in that patent.

IV. 37 CFR 1.607(a)(4)

Claims 53-89 presented in the 37 CFR 1.607(a)(4) amendment submitted herewith correspond to the proposed count. Indeed, the proposed count includes all of the independent claims in that group of claims.

While dependent claims 54-87 and 89 do not correspond exactly to the proposed count, applicants do not currently argue that any of those claims is drawn to a separate patentable invention within the meaning of 37 CFR 1.601(n).

V. 37 CFR 1.607(a)(5)

The terms of the application claims identified as corresponding to the proposed count and not previously in the application can be applied to the disclosure of the application as indicated in bold within { } below:

53. A method for marking a site **{item 26, Fig. 4; page 6 lines 18-20}** within the body of a mammalian patient from which a tissue sample has been removed, said method comprising the step of:

A. introducing into the site a detectable marker **{item 34, Fig. 5; page 5 lines 24-27 and page 6 lines 20-27}** that (i) remains present at the site in

sufficient quantity to permit detection and location of the site for at least a predetermined first time period after introduction **{page 3 lines 14-15 and page 7 lines 16-24}** and (ii) does not interfere with imaging of tissue adjacent the site at a predetermined second time point after introduction **{page 7 lines 17-20}**.

54. The method of claim 53 wherein the detectable marker is imageable, and wherein the marker remains present at the site in sufficient quantity to allow detection of the site by imaging of the marker at said first time point **{page 3 lines 12-14}** but clears sufficiently from the site so as to not interfere with imaging of tissue adjacent the site at said second time point **{page 3 lines 14-15 and page 7 lines 17-20}**.

55. The method of claim 54 wherein the imaging method by which the detectable marker is detected is selected from the group of imaging methods consisting of:

X-ray **{page 3 lines 12-14-i.e., mammography is an x-ray procedure}**;

fluoroscopy **{page 3 lines 12-14-i.e., fluoroscopy is an x-ray procedure}**;

mammography **{page 3 lines 12-14}**;

computed tomography **{page 3 lines 12-14-i.e. computed tomography is an x-ray procedure}**;

magnetic resonance imaging **{page 13 claim 27}**;

ultrasound **{page 3 lines 12-14}**;

Doppler **{page 3 lines 12-14-i.e., Doppler is an ultrasound procedure}**,

radiation detector **{page 8 lines 24-25}**; and

possible combinations thereof **{page 3 lines 12-14 and page 13 claim 27}**.

56. The method of claim 53 wherein the marker is detectable by palpation **{page 6 line 30-page 7 line 2}**.

57. The method of claim 56 wherein the palpable marker is selected from the group consisting of:

at least one bead **{page 3 lines 1-3}**;

a flowable space occupying material **{page 7 lines 4-6}**;

a collagenous material **{page 6 lines 22-24}**;

a gelatinous material **{page 9 lines 4-8}**;

gelatin **{page 9 lines 4-8}**;

cross-linked gelatin **{page 9 lines 4-8}**; and

possible combinations thereof **{page 9 lines 4-8}**.

58. The method of claim 53 wherein the marker is visually detectable **{page 3 lines 12-14 and page 4 lines 28-32}**.

59. The method of claim 58 wherein the visually detectable marker is a colored substance selected from the group consisting of:

a dye **{page 4 lines 28-29}**;

a coloring agent **{page 4 lines 28-29}**;

carbon **{page 2 line 16-18}**; and

possible combinations thereof **{page 4 lines 28-29}**.

60. The method of claim 53 wherein the detectable marker is detectable by a detection method selected from the group consisting of:

imaging of the marker **{page 3 lines 12-14}**;

palpation of the marker **{page 6 line 30-page 7 line 2}**;

visualization of the marker **{page 3 lines 12-14 and page 4 lines 28-29}**; and

possible combinations thereof **{page 3 lines 12-14 and page 4 lines 28-29}**.

61. The method of claim 53 wherein the detectable marker introduced in Step A comprises:

a detectable material that will interfere with imaging of tissues adjacent thereto and which remains present at the site in sufficient quantity to permit location of the site by imaging until the first time point **{page 3 lines 12-14}** but clears sufficiently from the site to not interfere with imaging of tissue adjacent the site at said second time point **{page 3 lines 14-15 and page 7 lines 17-20}**.

62. The method of claim 53 wherein the detectable marker introduced in Step A comprises:

a quantity of detectable material that, if introduced into the site alone, would clear from the site such that a detectable quantity of the marker would no longer be present at the site at 2 weeks after introduction of said detectable marker **{page 4 line 9}**; and,

a clearance delaying element that delays the clearance of said material from the site such that (i) a detectable quantity of said material remains present at the site until at least said first time point **{page 2 line 33-page 3 line 14}** and (ii) said material clears sufficiently from the site to permit imaging of tissue adjacent to the site without interference from said detectable marker at said second time point **{page 3 lines 14-15 and page 7 lines 17-20}**.

63. The method of claim 62 wherein the detectable material is a lipid **{page 9 lines 4-8}**.

64. The method of claim 62 wherein the clearance delaying element is selected from the group consisting of:

polylactic acid **{page 9 lines 4-8}**;

polyglycolic acid **{page 9 lines 4-8}**;

an encapsulating material **{page 7 line 34-page 8 line 7}**;

collagen **{page 9 lines 4}**;

renatured collagen **{page 9 line 4}**;

gelatin **{page 9 lines 8}**;

renatured gelatin **{page 9 line 8}**;

crosslinked gelatin **{page 9 line 8}**; and

the possible combinations thereof **{page 9 lines 4-8}**.

65. The method of claim 53 wherein the detectable marker comprises a material that is detectable by radiographic imaging means **{page 3 lines 12-14, page 4 lines 29-30, and page 8 lines 24-26}**.

66. The method of claim 53 wherein the detectable marker comprises a material that is detectable by sonographic imaging means **{page 3 lines 12-14, page 4 lines 30-32, and page 8 lines 24-26}**.

67. The method of claim 53 wherein the detectable marker comprises a material that is detectable by magnetic imaging means **{page 13 claim 27}**.

68. The method of claim 53 wherein the detectable marker comprises a dry powder **{page 6 lines 23-24-i.e., dehydrated callegen}**.

69. The method of claim 53 wherein the detectable marker comprises a sponge **{ page 6 lines 23-24-i.e. dehydrated callegen}**.

70. The method of claim 53 wherein the detectable marker comprises a liquid **{page 7 lines 3-6}**.

71. The method of claim 53 wherein the detectable marker comprises a flowable material **{page 7 lines 3-6}**.

72. The method of claim 53 wherein the detectable marker comprises a collagenous material having radiographically imageable matter attached thereto **{page 6 lines 20-24 and page 8 lines 24-26}**.

73. The method of claim 72 wherein the collagenous material of the marker comprises renatured collagen **{page 9 line 8}**.

74. The method of claim 73 wherein the collagenous material is also covalently crosslinked **{page 9 line 4-i.e., callagens are crosslinked}**.

75. The method of claim 72 wherein the radiographically imageable matter comprises ions **{page 8 lines 7-13}**.

76. The method of claim 74 wherein the radiographically imageable matter comprises a radiopaque marker **{page 8 lines 24-26}**.

77. The method of claim 72 wherein the collagenous material of the marker comprises renatured collagen and the radiographically imageable matter of the marker comprises ions that are bound to said renatured collagen **{page 9 line 4 and page 8 lines 7-13}**.

78. A method according to claim 75 wherein the marker is prepared by a process that comprises:

a. obtaining a quantity of denatured collagenous material **{page 9 lines 4-8}**;

b. renaturing the collagenous material **{page 9 lines 4-8}**; and,

c. binding ions to the renatured collagenous material **{page 9 lines 4-8 and page 8 lines 7-13}**.

79. A method according to claim 76 wherein the marker is prepared by a process that comprises:

a. obtaining a quantity of denatured collagenous material **{page 9 lines 4-8}**;

b. renaturing the collagenous material **{page 9 lines 4-8}**; and

c. dispersing a radiopaque marker throughout the renatured collagenous material **{page 9 line 4-8 and page 8 lines 24-26}**.

80. The method of claim 72 wherein the decectable marker comprises a gelatinous material having radiographically imageable matter combined therewith **{page 9 lines 4-8, page 4 lines 29-30, and page 8 lines 24-26}**.

81. The method of claim 80 wherein the gelatinous material of the marker comprises renatured gelatin **{page 9 line 8}**.

82. The method of claim 81 wherein the gelatinous material is also covalently crosslinked **{page 9 lines 4-8}**.

83. The method of claim 80 wherein the radiographically imageable matter comprises ions **{page 8 lines 7-13}**.

84. The method of claim 80 wherein the radiographically imageable matter comprises a radiopaque marker **{page 8 lines 24-26}**.

85. The method of claim 80 wherein the gelatinous material of the marker comprises renatured gelatin and the radiographically imageable matter of the marker comprises ions that are bound to said renatured gelatin **{page 9 lines 4-8 and page 8 lines 24-26}**.

86. The method of claim 75 wherein the marker is prepared by a process that comprises:

d. obtaining a quantity of denatured gelatin **{page 9 lines 4-8}**;

e. renaturing the gelatin **{page 9 lines 4-8}**; and,

f. binding ions to the renatured gelatin **{page 8 lines 7-13}**.

87. The method of claim 76 wherein the marker is prepared by a process that comprises:

d. obtaining a quantity of denatured gelatin **{page 9 lines 4-8}**;

e. renaturing the gelatin **{page 9 lines 4-8}**; and,

f. dispersing a radiopaque marker throughout the renatured gelatin **{page 8 lines 24-26}**.

88. A method of identifying tissue that is located within a predetermined distance of a boundary of a biopsy cavity that has been created by the removal of a biopsy specimen from a patient, said method comprising the steps of:

a. introducing into the biopsy cavity a quantity of marker material that is visibly distinguishable from blood and surrounding tissue so as to delineate the outer boundaries of the biopsy cavity **{Fig. 5; item 34; page 3 lines 12-14, page 4 lines 28-32, page 5 lines 24-27, and page 6 lines 20-24}**;

b. forming an incision in the patient to permit visualization of the marker material and the boundaries of the biopsy cavity delineated thereby **{page 1 lines 18-19 and page 3 lines 30-32}**; and,

c. identifying the tissue that lies within said predetermined distance of the boundary of the biopsy cavity **{page 3 lines 30-32}**.

89. The method of claim 88 wherein it is desired to remove the tissue that lies within said predetermined distance of a boundary of the biopsy cavity and wherein the method further comprises the step of:

d) excising and removing tissue that lies within said predetermined distance of the boundary of the biopsy cavity **{page 1 lines 18-19, page 3 lines 30-32, and page 1 lines 18-19}**.

VI. 37 CFR 1.607(a)(6)

37 CFR 1.607(a)(6) is irrelevant since this request and the accompanying 37 CFR 1.607(a)(4) amendment are being submitted prior to one year from the date on which the '034 patent was granted.

VII. REQUEST FOR THE BENEFIT OF THE FILING DATE OF APPLICANTS PRIORITY APPLICATION

Applicants claim priority under 35 USC 120 based upon application serial No. 09/366,360, which was filed on June 18, 1999 and application serial No. 09/900,801, which was filed on July 06, 2001. Applicants are entitled to the benefit of the filing dates of their earlier filed applications for interference purposes if the count reads on at least one adequately disclosed embodiment in the earlier applications.[1] Assuming that the examiner recommends to the board applicants' proposed count, applicants clearly meet that standard. That this is so is demonstrated from the fact that this application is a continuation application from application serial No. 09/900,801, which a continuation application from application serial No, 09/366,360. Consequently, applicants' earlier filed applications have the same disclosure as the instant application, and the application of the terms of the claims to the disclosure in Section V herein is equally applicable to the disclosure of the earlier applications.

Applicants claim priority under 35 USC 119(e) based upon provisional application No. 60/090,243, which was filed on June 22, 1998; provisional application 60/092,734, which was filed on July 14, 1998; provisional application No. 60/114,863, which was filed on January 6, 1999; and provisional application No. 60/117,421, which was filed on January 27, 1999. As stated in the previous paragraph, applicants are entitled to the benefit of the filing date of the earlier filed applications for interference purposes if the count reads on at least one adequately disclosed embodiment within the earlier application. Assuming that the examiner recommends to the board applicants' proposed count, applicants clearly meet that standard. That this is so is demonstrated below wherein the terms of the proposed count are applied to

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[1] Weil v. Fritz, 572 F.2d 856, 865-66 n.16, 196 USPQ 600, 608 n.16 (CCPA 1978).

disclosure as indicated in bold within { } with respect to each of the above-noted provisional applications:

1. Provisional application No. 60/090,243 filed June 22, 1998.

53. A method for marking a site within the body of a mammalian patient from which a tissue sample has been removed, said method comprising the step of:

A. introducing into the site a detectable marker that (i) remains present at the site in sufficient quantity to permit detection and location of the site for at least a predetermined first time period after introduction **{page 6 line 21-page 7 line 1 and page 11 lines 4-15; Figs. 3-8}** and (ii) does not interfere with imaging of tissue adjacent the site at a predetermined second time point after introduction **{page 6 lines 12-17 and page 9 lines 1-6}**.

88. A method of identifying tissue that is located within a predetermined distance of a boundary of a biopsy cavity that has been created by the removal of a biopsy specimen from a patient, said method comprising the steps of:

a. introducing into the biopsy cavity a quantity of marker material that is visibly distinguishable from blood and surrounding tissue so as to delineate the outer boundaries of the biopsy cavity **{page 6 line 21-page 7 line 1, page 8 lines 9-17, and page 11 lines 4-15; Figs. 3-8}**;

b. forming an incision in the patient to permit visualization of the marker material and the boundaries of the biopsy cavity delineated thereby **{page 6 lines 12-13 and page 8 lines 9-17}**; and,

c. identifying the tissue that lies within said predetermined distance of the boundary of the biopsy cavity **{page 5 lines 3-6 and page 8 line 18-page 9 line 7}**.

2. Provisional application No. 60/092,734 filed July 14, 1998.

53. A method for marking a site within the body of a mammalian patient from which a tissue sample has been removed, said method comprising the step of:

A. introducing into the site a detectable marker that (i) remains present at the site in sufficient quantity to permit detection and location of the site for at least a predetermined first time period after introduction **{page 6 line 24-page 7 line 4 and page 12 lines 7-18; Figs. 3-8}** and (ii) does not interfere with imaging of tissue adjacent the site at a predetermined second time point after introduction **{page 6 lines 16-20 and page 9 lines 4-10}**.

88. A method of identifying tissue that is located within a predetermined distance of a boundary of a biopsy cavity that has been created by the removal of a biopsy specimen from a patient, said method comprising the steps of:

a. introducing into the biopsy cavity a quantity of marker material that is visibly distinguishable from blood and surrounding tissue so as to delineate the outer boundaries of the biopsy cavity **{page 6 line 24-page 7 line 4, page 8 lines 12-20, and page 12 lines 7-18; Figs. 3-8}**;

b. forming an incision in the patient to permit visualization of the marker material and the boundaries of the biopsy cavity delineated thereby **{page 6 lines 15-16 and page 8 lines 12-20}**; and,

c. identifying the tissue that lies within said predetermined distance of the boundary of the biopsy cavity {**page 5 lines 5-8 and page 8 line 23-page 9 line 10**}.

3. Provisional application No. 60/114,863 filed January 06, 1999.

53. A method for marking a site within the body of a mammalian patient from which a tissue sample has been removed, said method comprising the step of:

A. introducing into the site a detectable marker that (i) remains present at the site in sufficient quantity to permit detection and location of the site for at least a predetermined first time period after introduction {**page 7 lines 18-22 and page 14 lines 4-15; Figs. 3-8**} and (ii) does not interfere with imaging of tissue adjacent the site at a predetermined second time point after introduction {**page 6 lines 16-20 and page 10 lines 1-7**}.

88. A method of identifying tissue that is located within a predetermined distance of a boundary of a biopsy cavity that has been created by the removal of a biopsy specimen from a patient, said method comprising the steps of:

a. introducing into the biopsy cavity a quantity of marker material that is visibly distinguishable from blood and surrounding tissue so as to delineate the outer boundaries of the biopsy cavity {**page 7 lines 18-22, page 9 lines 9-19, and page 14 lines 4-15; Figs. 3-8**};

b. forming an incision in the patient to permit visualization of the marker material and the boundaries of the biopsy cavity delineated thereby {**page 6 lines 18-19 and page 9 lines 9-19**}; and,

c. identifying the tissue that lies within said predetermined distance of the boundary of the biopsy cavity **{page 5 lines 7-10 and page 9 line 20-page 10 line 7}**.

4. Provisional application No. 60/117,421 filed January 27, 1999.

53. A method for marking a site within the body of a mammalian patient from which a tissue sample has been removed, said method comprising the step of:

A. introducing into the site a detectable marker that (i) remains present at the site in sufficient quantity to permit detection and location of the site for at least a predetermined first time period after introduction **{page 7 lines 13-17}** and (ii) does not interfere with imaging of tissue adjacent the site at a predetermined second time point after introduction **{page 6 lines 10-13 and page 9 line 25-page 10 line 5}**.

88. A method of identifying tissue that is located within a predetermined distance of a boundary of a biopsy cavity that has been created by the removal of a biopsy specimen from a patient, said method comprising the steps of:

a. introducing into the biopsy cavity a quantity of marker material that is visibly distinguishable from blood and surrounding tissue so as to delineate the outer boundaries of the biopsy cavity **{page 7 lines 13-17 and page 9 lines 6-15}**;

b. forming an incision in the patient to permit visualization of the marker material and the boundaries of the biopsy cavity delineated thereby **{page 6 lines 8-9 and page 9 lines 6-15}**; and,

c. identifying the tissue that lies within said predetermined distance of the boundary of the biopsy cavity **{page 4 line 26-page 5 line 3 and page 9 line 18-page 10 line 5}**.

VIII. 37 CFR 1.608

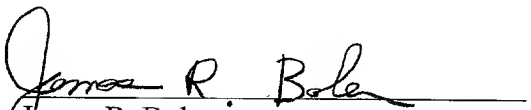
37 CFR 1.608 is irrelevant since the effective filing date of this application precedes the effective filing date of the '034 patent.

For the foregoing reasons, the party Fulton, III, et al. should be the senior party in the requested interference.

IX. SUBMISSION OF PROPOSED FORM PTO-850

Submitted herewith for the convenience of the examiner is a proposed form PTO-850.

Respectfully submitted,



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